No. 83-877

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# Supreme Court of the United States

OCTOBER TERM 1983

CURTIS H. JOHNSON and GLORIA JEAN JOHNSON, d/b/a OAK FARM LIVESTOCK and OAK FARMS, INC. and OAK FARMS SERVICE CO.,
*Petitioners,*

—vs.—

FIRST NATIONAL BANK OF MONTEVIDEO, MINNESOTA,
*Respondent.*

## PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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## QUESTION PRESENTED FOR REVIEW

Whether there is a federal interest in preserving property of a debtor's estate for the benefit of all of the creditors of the debtor which gives the bankruptcy court the power to supercede state law and toll the statutory redemption period following a mortgage foreclosure sale when circumstances indicate that there is equity in the property and the property is necessary for reorganization of the affairs of the debtor.

## TABLE OF CONTENTS


| | Page |
|---|---|
| QUESTION PRESENTED ..... | i |
| TABLE OF AUTHORITIES ..... | iv |
| OPINIONS BELOW ..... | viii |
| JURISDICTION ..... | viii |
| STATUTES INVOLVED ..... | ix |
| STATEMENT OF THE CASE ..... | 1 |
| REASONS WRIT SHOULD BE GRANTED ..... | 5 |
| CONCLUSION ..... | 21 |

Page

APPENDIX ..... A-1

Order from the United States Court of Appeals for for the Eighth Circuit staying mandate ..... A-1

Appeal from the United States District Court for the District of Minnesota ..... A-3

Appeal from the United States Bankruptcy Court, District of Minnesota ..... A-41

Order of the United States Bankruptcy Court ..... A-53

## TABLE OF AUTHORITIES


| | Pages |
|---|---|
| **CONSTITUTION** | |
| U.S. Const. art. I § 8, cl. 4 | 10, 11 |
| **FEDERAL STATUTES** | |
| 11 U.S.C. §§ 1-703 | 6 |
| 11 U.S.C. § 2a(15) | 6 |
| 11 U.S.C. § 11 | 6, 7 |
| 11 U.S.C. § 11(e) | 7 |
| 11 U.S.C. § 105 | 5, 6, 10 |
| 11 U.S.C. § 105(a) | 2, 3, 5, 6 |
| 11 U.S.C. § 108 | 10 |
| 11 U.S.C. § 108(b) | 5, 6 |
| 11 U.S.C. § 116 | 6, 7 |
| 11 U.S.C. § 148 | 6, 7 |
| 11 U.S.C. § 362 | 10, 11 |
| 11 U.S.C. § 362(a) | 3, 6 |
| 11 U.S.C. § 362(d) | 16 |
| 11 U.S.C. § 363 | 11 |
| 11 U.S.C. § 363(e) | 17 |
| 11 U.S.C. § 364 | 11 |
| 11 U.S.C. § 365 | 11 |
| 11 U.S.C. § 506 | 11 |
| 11 U.S.C. § 507 | 11 |
| 11 U.S.C. § 522 | 11 |
| 11 U.S.C. § 541 | 11, 12, 16 |

| | Pages |
|---|---|
| 11 U.S.C. § 553 ..... | 11 |
| 11 U.S.C. § 722 ..... | 11 |
| 28 U.S.C. 1254(1) ..... | viii |
| 28 U.S.C. § 1334 ..... | 4 |
| 28 U.S.C. § 1471 ..... | 4 |
| 30 Stat. 544-566 (1898) ..... | 11 |
| I.R.C. § 6321 ..... | 17 |
| **MINNESOTA STATUTES** | |
| Minn. Stat. §§ 580.01, et seq. (1982) ..... | 12 |
| Minn. Stat. § 580.23(2) ..... | 2 |
| **OTHER STATE STATUTES** | |
| Ark. Stat. Ann. § 51-1111 (1971) ..... | 9 |
| Cal. Civ. Proc. Code § § 729.010-.090 (West Supp. (1983) ..... | 9 |
| Ill. Ann. Stat. ch. 77, § 18 (Smith-Hurd 1966) .... | 9 |
| Iowa Code Ann. § 654.5 (West 1950) ..... | 9 |
| La. Civ. Code Ann. art. 2570 (West 1952) ..... | 9 |
| Me. Rev. Stat. Ann. tit. 14, § 6204 (1980) ..... | 9 |
| Mass. Gen Laws Ann. ch. 244, § 18 (West 1959) ..... | 9 |
| Mich. Comp. Laws Ann. § 600.3140 (1983-84) ..... | 9 |
| Mo. Ann. Stat. § 140.010 (Vernon 1983) ..... | 9 |

| | Pages |
|---|---|
| Mo. Ann. Stat. § 443.410 (Vernon 1952) ..... | 9 |
| N.D. Cent. Code. § 32-19-09 (1976) ..... | 9 |
| N.J. Stat. Ann. § 2A:50-4 (1983-84) ..... | 9 |
| N.Y. RPAPL Law § 1352 (McKinney 1979) ..... | 9 |
| Nev. Rev. Stat. § 21.190-.210 (1981) ..... | 9 |
| Utah Code Ann. § 78-37-6 (1977) ..... | 9 |
| Wash. Rev. Code Ann. § 6.24.140-.160 (1983-84) ... | 9 |
| **CASES** | |
| Butner v. United States, 440 U.S. 48 (1979) ..... | 10, 12, 13, 14 |
| Carlson v. Presbyterian Board of Relief, 67 Minn. 436, 70 N.W. 3, 4 ... | 15 |
| Daniels v. Smith, 4 Minn. 172, Gil 117 (1860) ..... | 14 |
| Donnelly v. Simonton, 73 Minn. 167, Gil 110 (1862) ..... | 14 |
| Gardner v. W.M. Prindle & Co., 185 Minn. 147, 240 N.W. 351 (1932) ..... | 15 |

Pages

In Re Thomas J. Grosso Investment, Inc., 457 F.2d 168 (9th Cir. 1972) ..... 5, 6, 7, 10

Lindgren v. Lindgren, 73 Minn. 90, 75 N.W. 1034 (1898) ..... 14

Phelps v. United States, 421 U.S. 330 (1975) ..... 18

United States v. Whiting Pools, ___ U.S. ___, 103 S.Ct. 2309 (1983) ..... 12, 13, 16, 17, 18

## OPINIONS BELOW

The United States Bankruptcy Court opinion is unreported. See Pet. App. A-53. The United States District Court for the District of Minnesota opinion is reported at 19 B.R. 651. See Pet. App. A-41. The opinion of the United States Court of Appeals for the Eighth Circuit is unreported. See Pet. App. A-3.

## JURISDICTION

The jurisdiction of this Court is conferred by 28 U.S.C. § 1254(1) to review an order of the United States Court of Appeals for the Eighth Circuit entered October 11, 1983.

## STATUTES INVOLVED

11 U.S.C. § 105(a):

> The bankruptcy court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.

11 U.S.C. § 108(b):

> Except as provided in subsection (a) of this section, if applicable law, an order entered in a proceeding, or an agreement fixes a period within which the debtor or an individual protectded under section 1301 of this title may file any pleading, demand, notice, or proof of claim or loss, cure a default, or perform any other similar act, and such period has not expired before

the date of the filing of the petition, the trustee may only file, cure, or perform, as the case may be, before the later of--

(1) the end of such period, including any suspension of such period occurring on or after the commencement of the case; and

(2) 60 days after the order for relief.

11 U.S.C. § 362(a):

(a) Except as provided in subsection (B) of this section, a petition filed under section 301, 302, or 303 of this title operates as a stay, applicable to all entities, of--

(1) the commencement or continuation, including the

issuance or employment of process, of a judicial, administrative, or other proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;

(2) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title;

(3) any act to obtain possession of property of the estate or of property from the

estate;

(4) any act to create, perfect, or enforce against property of the debtor any lien against property of the estate;

(5) any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secures a claim that arose before the commencement of the case udnder this title;

(6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title;

(7) The setoff of any debt owing to the debtor that arose before the commencement of the

Case under this title against any claim against the debtor; and

(8) the commencement or continuation of a proceeding before the United States Tax Court concerning the debtor.

## STATEMENT OF THE CASE

Curtis H. Johnson and Gloria Jean Johnson are the principal officers and shareholders of Oak Farms, Inc. and Oak Farms Service Co., Minnesota corporations engaged in farming and agricultural related business pursuits. The two corporations and the Johnsons individually are debtors who have filed petitions under Chapter 11 of the United States Bankruptcy Code ("Code"). In 1978 and 1979 the individual debtors and the two corporations executed two mortgages on certain real estate to secure twenty notes in the total amount of $950,000 in favor of First National Bank of Montevideo, Minnesota ("bank"). Following the debtors' default in September 1980, the bank commenced

foreclosure proceedings. A sheriff's auction was held on October 31, 1980, pursuant to Minnesota statute and the bank purchased the property for the sum of $566,355.34. Under Minnesota law the debtors had one year from the time of sale to redeem the property by paying the bank the sale price, plus interest from the date of sale. Minn. Stat. § 580.23(2).

Prior to the expiration of the redemption period, the debtors filed their bankruptcy petitions, and an adversary complaint alleging, inter alia, that they had substantial equity in the mortgaged property and sought an order from the bankruptcy court staying the expiration of the redemption period pursuant to 11 U.S.C. § 105(a). The bankruptcy judge found that an exigency

existed, that the debtors had substantial equity in the property which could be utilized for the benefit of all of their creditors, and enjoined the bank from taking further action to foreclose the property and ordered that the running of the redemption period be stayed until further order of the court.

On March 17, 1982, the district court affirmed the bankruptcy judge's order. On October 11, 1983, the United States Court of Appeals for the Eighth Circuit reversed the decision of the district court, and without considering the rights of creditors of the debtors other than the bank, remanded the case to the district court for further proceedings consistent with its opinion that the bankruptcy court lacked authority under either section 105(a) or section 362(a)

of the Code to stay indefinitely the expiration of the redemption period. On October 26, 1983 the Court of Appeals stayed the issuance of its mandate for thirty days so that this petition could be filed, and thereafter pending this Court's disposition of the case.

Jurisdiction over the subject matter of this case is lodged in the first instance in the United States Bankruptcy Court for the District of Minnesota pursuant to 28 U.S.C. § 1471, or in the alternative, 28 U.S.C. § 1334 and Rule of the United States District Court for the District of Minnesota dated December 21, 1982.

## REASONS WRIT SHOULD BE GRANTED

1. THE DECISION OF THE EIGHTH CIRCUIT HEREIN IS IN DISAGREEMENT WITH THE DECISION OF THE NINTH CIRCUIT IN IN RE THOMAS J. GROSSO INVESTMENT, INC.

The Eighth Circuit decision herein holds that the only limitation provided by the Code on the running of the statutory period of redemption is provided by section 108(b) of the Code, which gives the trustee a period of sixty days from the date of filing to act to redeem. The Court of Appeals reversed the bankruptcy court and the district court findings that section 105(a) of the Code, which is a broad grant of jurisdiction to "issue any order, process or judgment that is necessary to carry out the provisions of this title" allowed the stay of the running of the redemption

period. 11 U.S.C. § 105(a). The Ninth Circuit in In Re Thomas J. Grosso Investment, Inc., 457 F.2d 168 (9th Cir. 1972), in a case decided under Chapter X of the old Bankruptcy Act, 11 U.S.C. §§ 1-703 (1972) ("Act"), found that the bankruptcy court had the power to stay the running of a statutory period of redemption following a mortgage foreclosure, relying on section 2a(15) of the Act, which was the predecessor to section 105 of the Code. The court held that the stay provided by sections 116 and 148 (predecessors to section 362(a) of the Code) was not limited by section 11 (predecessor to section 108(b)). The Ninth Circuit's decision correctly focused on the need for the court to exercise its power under section 2a(15) to protect the property of a debtor in

reorganization proceedings where there is the likelihood of rehabilitation of a going business, as opposed to the estate in a liquidation bankruptcy. In rejecting the contention that section 11 provided the only power to extend a redemption period, the court found:

> In chapter X, where the purpose is rehabilitation of a going business, a period of grace is not needed. The Act itself provides all the time required. The second sentence of § 11(e), then, when applied to Chapter X, converts itself into a drastic limitation upon the power of the court to protect the property of the debtor in the manner contemplated by and for the purposes of the Act.
>
> Accordingly, we hold that the stays provided by §§ 116 and 148 are not limited by § 11(e).

457 F.2d at 173.

The Eighth Circuit's decision herein clearly ignores the interests of creditors of the debtors other than the bank, and the federal interest in reorganization to

allow for equitable distribution of the debtor's estate to all creditors and favors the bank by allowing the exercise of its state law foreclosure remedy.

The opinion of the Eighth Circuit attempts to distinguish the situation in jurisdictions in which there is an affirmative act required to complete the foreclosure proceedings under the state statutory scheme from those in jurisdictions like Minnesota in which no further affirmative act by the forecloser is necessary other than the passage of time to pass title to the purchaser. This distinction totally ignores the federal interest in preserving the property of the bankruptcy estate, which includes the equity of redemption, whether or not some further ministerial act is required in order for the

foreclosure to be completed.

The decision of the Eighth Circuit affects not just the state of Minnesota, but at least 15 other jurisdictions in which the foreclosure laws similarly provide for the issuance of a sheriff's deed at the time of the foreclosure sale, followed by a period of redemption after which the title passes to the purchaser with no further "act."[1] The Ninth

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[1]Me. Rev. Stat. Ann. tit. 14, § 6204 (1980); Mich. Comp. Law Ann. § 600.3140 (West 1983-84); N.J. Stat. Ann. § 2A:50-4 (West 1983-84); N.D. Cent. Code § 32-19-09 (1976); Mo. Ann. Stat. § 443.410 (Vernon 1952); Mo. Ann. Stat. § 140.010 (Vernon 1983); Mass. Gen. Laws Ann. ch. 244, § 18 (West 1959); La. Civ. Code Ann. art. 2570 (West 1952); Iowa Code Ann. § 654.5 (West 1950); N.Y. RPAPL Law § 1352 (McKinny 1979); Ark. Stat. Ann. § 51-1111 (1971); Wash. Rev. Code Ann. § 6.24.140-.160 (1983-84); Utah Code Ann. § 78-37-6 (1977); Ill. Ann. Stat. ch. 77, § 18 (Smith-Hurd 1966); Cal. Civ. Proc. Code §§ 729.010-.090 (West Supp. 1983); Nev. Rev. Stat. § 21.190-.210 (1981).

Circuit view expressed in Grosso provides that neither the automatic stay provided by section 362 nor the broad powers of the bankruptcy court under section 105 are limited to the sixty-day period provided in section 108, and can be utilized by the bankruptcy judge to effectuate the purposes of the Code to stay the running of a mortgage redemption period.

This conflict between the circuits should be addressed by this Court to stabilize the application of the Bankruptcy Code in the various circuits and states.

2. THIS CASE INVOLVES IMPORTANT FEDERAL INTERESTS, AND IS IN CONFLICT WITH THE DECISIONS OF THIS COURT IN BUTNER V. UNITED STATES AND UNITED STATES V. WHITING POOLS, INC.

The Bankruptcy Reform Act of 1978 was enacted pursuant to Article I of the

United States Constitution. U.S. Const. art. I, § 8, cl. 4. Congress attempted to create an orderly scheme for liquidation and distribution of debtors' estates for the benefit of creditors. 11 U.S.C. §§ 363, 507. This was in furtherance of similar schemes effectuated by prior legislation since the enactment of the original Bankruptcy Act of 1898. 30 Stat. 544-566 (1898). This scheme is in substantial conflict with the essential principles of state debtor-creditor law. See, for example, Code sections 362, 363, 364, 365, 506, 522, 541, 553 and 722.

This conflict arises because the state concentrates on the transactions between one creditor and one debtor and the federal bankruptcy law has the goal of treating fairly all creditors of one debtor.

Under Minnesota mortgage foreclosure law only parties holding liens have any interest in the property. See Minn. Stat. §§ 580.01, et seq. (1982).

Under the Bankruptcy Code all creditors have an interest in property of the estate as defined in section 541 and are represented by the trustee (debtor-in-possession). In United States v. Whiting Pools, Inc., ___ U.S. ____, 103 S. Ct. 2309 (1983), this Court focused on this fundamental tension between the interests of one secured creditor under applicable non-bankruptcy law and all creditors under bankruptcy law. This Court's decision in Butner v. United States, 440 U.S. 48 (1979) illustrates in result the federal interest of favoring interests of many creditors over those of a single creditor. This case presents the essence

of the tension between state and federal principles. In Butner and Whiting Pools this Court resolved in favor of the interests of the many over the few. It should do so in the instant case as well.

The Eighth Circuit decision rests heavily upon this Court's decision in Butner. The Court's refusal to create a uniform rule regarding a mortgagor's right to the use of rents during a foreclosure redemption period is cited as evidence of the Court's unwillingness to tamper with state property rights in the absence of a specific Congressional mandate. This interpretation involves both a misinterpretation of this Court's finding in Butner and of Minnesota state law with regard to the nature of the rights of a mortgagee following foreclosure during the redemption period.

In Butner the court was dealing with a liquidation under Chapter 7 of the Bankruptcy Code, and the considerations present in a reorganization under chapter 11 were not present. The Court made it clear in Butner that where the judge is called upon to deal with "individualized problems" and where a "federal interest requires a different result," the bankruptcy judge has the power to fashion equitable remedies. Id. at 55-56.

Under Minnesota mortgage foreclosure law, the mortgagee upon purchasing at a sheriff's sale does not acquire title to the property until the redemption period has ended. Lindgren v. Lindgren, 73 Minn. 90, 75 N.W. 1034 (1898); Donnelly v. Simonton, 7 Minn. 167, Gil. 110 (1862); Daniels v. Smith, 4 Minn. 172, Gil. 117 (1860). The rights of the

purchaser-mortgagee are described by the Minnesota Supreme Court as those of a lien holder by virtue of a statutory lien:

> If the mortgagee is the purchaser [at a foreclosure sale] he has in lieu of his former mortgage lien on under the statute 'for the amount of the purchase price, which was applied in payment of his debt.' Carlson v. Presbyterian Board of Relief, 67 Minn. 436, 70 N.W. 3, 4. The character of that lien and its limitations are determined by the the statute and not by the mortgage.

Gardner v. W.M. Prindle & Co., 185 Minn. 147, 240 N.W. 351 (1932).

This characterization of the interest of the mortgagee-purchaser as that of a statutory lien holder brings into proper perspective the nature of that interest, and consequently the power of the bankruptcy court to deal with the rights of the holder of that lien under the Bankruptcy Code. Since the mortgagor retains both title and possession of the

property until the expiration of the redemption period under Minnesota state law, the property is per se property of the bankruptcy estate pursuant to section 541 of the Code, and subject to the other provisions of the Code which offer appropriate remedies for holders of interests in property of the estate such as section 362(d). The Eighth Circuit has advanced no policy favoring requiring the bankruptcy court to treat the holder of such a statutory lien differently from secured creditors with interests in other types of property which comprise property of the debtor's estate.

In its decision in United States v. Whiting Pools, Inc., 103 S.Ct. 2309 (1983) this Court required the Internal Revenue Service to return property which it had seized under section 6321 of the

Internal Revenue Code. I.R.C. § 6321. The Court there expressed its recognition of Congress' broad interest in facilitating rehabilitation of debtors.

> By permitting reorganization, Congress anticipated that the business would continue to provide jobs, to satisfy creditors' claims, and to produce a return for its owners....The reorganization effort would have small chance of success, however, if property essential to running the business were excluded from the estate.

103 S.Ct. at 2312. The Court went on to describe the limitations which the Bankruptcy Code places on secured creditors rights under state law, and the protections which Congress provided secured creditors under the provisions of section 363(e). The Court stresses the point that the Internal Revenue Service's interest in the property does not exceed the value of its lien, which is the precise status of a mortgagee-purchaser

during the redemption period under Minnesota law.

This Court in Whiting Pools, stating that its prior decision in Phelps v. United States, 421 U.S. 330 (1975) did not control because of the expanded jurisdiction of the bankruptcy court under the Bankruptcy Code, recognized the different considerations in liquidation and reorganization proceedings. 103 S. Ct. at 2314 n.13 and 2316 n.18. It was for precisely the same reasons that the Court ordered the Internal Revenue Service to return property of the estate to the debtor-in-possession in Whiting Pools, that the bankruptcy court in the instant case ordered the staying of the redemption period following the bank's foreclosure--because of the necessity of the property to the reorganization of the

debtors, and because the court had access to other provisions of the Code to protect the interest of the bank.

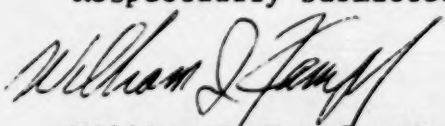
It would be incongruous to conclude that there is no substantial federal interest in reorganization of the affairs of the debtors herein because the property right involved is the right to redeem real property which remains in the hands of the debtor, and which is sought by the creditor holding a lien provided by state statute rather than the right to possession of property of the debtor and to sell such property created by the statutory lien of the Internal Revenue Service. Neither the seizure of property by the Internal Revenue Service nor the sheriff's sale to the bank in the instant case vests any absolute rights to the property which are not subject to the

equitable power of the bankruptcy court to create alternative remedies for the protection of those interests which allow the debtors the opportunity to reorganize for the benefit of their employees and creditors, as well as themselves.

## CONCLUSION

For the foregoing reasons petitioners respectfully request that the Court grant the petition for a writ of certiorari, and the order of the Court of Appeals and remand to the bankruptcy court for further proceedings or set the case for full argument.

Respectfully submitted,



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# APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

| | | |
|---|---|---|
| No. 82-1622. | | September Term, 1983 |
| Curtis H. Johnson, etc., et al., Appellees, | ) | Appeal from the United States District Court for the District of Minnesota |
| vs. | ) | |
| First National Bank of Montevideo, Minnesota, Appellant. | ) | |

On Motion of appellees, it is now here ordered that the issuance of the mandate herein be, and the same is hereby, stayed for a period of thirty days from this date. If within that time there is filed with the Clerk of this Court a certificate of the Clerk of the Supreme Court of the United States that a petition for writ of certiorari has been filed, the stay hereby granted shall

continue until the final disposition of the case by the Supreme Court.

October 26, 1983

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 82-1622

| | | |
|---|---|---|
| Curtis H. Johnson and Gloria Jean Johnson, d/b/a Oak Farm Livestock and Oak Farms, Inc. and Oak Farms Service Co., Appellees, | * | Appeal from the United States District Court for the District of Minnesota |
| v. | * | |
| First National Bank of Montevideo, Minnesota, Appellant. | * | |

Submitted: March 16, 1983
Filed: October 11, 1983

Before ROSS, JOHN R. GIBSON, Circuit Judges, and ROBERTS, District Judge.*

ROSS T. ROBERTS, District Judge.

*The Honorable Ross T. Roberts, United States District Judge for the Western District of Missouri, sitting by designation.

This case presents a troublesome question concerning whether a bankruptcy court possesses the authority to toll or suspend the running of a statutory redemption period created by state law in connection with real estate mortgage foreclosures.

The First National Bank of Montevideo ("First National") appeals from an order of the District Court for the District of Minnesota.[1] That District Court order affirmed a bankruptcy court order which enjoined First National from taking further action to foreclose a lien on certain real estate, and stayed the expiration of the redemption period allowed by Minnesota law. For the reasons set forth below we reverse the

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1. First National Bank of Montevideo v. Johnson, 19 B.R. 651 (Bkrtcy. Minn. 1981).

judgment of the district court, and remand for further proceedings consistent with this opinion.

The relevant facts are undisputed. Curtis H. Johnson and Gloria Jean Johnson ("debtors") are the principal officers and shareholders of Oak Farms, Inc., and Oak Farms Service Co., both Minnesota corporations engaged in agricultural business pursuits. In 1978 Oak Farms, Inc. executed a mortgage on certain parcels of real estate located in Yellow Medicine and Lac qui Parle counties, Minnesota, to secure a $300,00 promissory note in favor of First National. In 1979, Oak Farms, Inc., Oak Farms Service Co., and the Johnsons executed a second mortgage to First National on the same property to secure nineteen additional promissory notes totaling approximately $650,000. Each mortgage contained a

clause allowing First National to sell the mortgaged property at public auction in the event of default.

Following the debtor's default in September of 1980, First National commenced foreclosure proceedings. A sheriff's auction was held on October 31, 1980, in conformity with the requirements of Minnesota statutes. At that auction First National purchased the mortgaged property for the sum of $566,355.34.

Minn. Stat. §580.23(2) provides that a mortgagor shall have twelve months following the sale of real estate within which to redeem the property by paying the sale price plus interest from the date of the sale.[2]

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2. The one-year period of redemption applies to tracts of land more than ten acres in size. For tracts of lesser

In this instance that redemption period would have expired on or about October 31, 1981. Approximately three weeks prior to the expiration date, however, without having redeemed the property, the debtors filed a joint petition for reorganization under Chapter 11 of the Bankruptcy Code (the "Code"), and an adversary complaint alleging, in part, that they had substantial equity in the mortgaged property and were entitled to an order staying the expiration of the redemption period.

At a hearing convened before the bankruptcy court on October 16, 1981, Curtis Johnson testified that he estimated the value of the mortgaged

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2 (continued)

size, the period of redemption is six months. Minn. Stat. §580.23(1).

property at $2,720,000 and that the encumbrances against the property totaled $2,043.000. Based on Johnson's testimony, on October 20, 1981, the bankruptcy judge found that "an exigency exists, and that the debtors have substantial equity in [the] real property." Upon these findings, he enjoined First National from taking any further action to foreclose the property and ordered that the running of the statutory redemption period be stayed until further order or until the bankruptcy cases concerning the property were closed, all pursuant to 11 U.S.C. §105.[3] On March 17, 1982, the district

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3. Subsection(a) of §105 provides as follows:

> "The bankruptcy court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title."

court affirmed the bankruptcy court's order.

This Court subsequently granted First National leave to appeal pursuant to 28 U.S.C. §1292(a), subject to reconsideration should it be determined that the grant of permission to appeal was improvident. We now conclude that this matter is properly before us for review under §1292(a)(1), which grants the courts of appeal jurisdiction over "appeals from . . .[i]nterlocutory orders of the district courts . . . granting, continuing, modifying, refusing or dissolving injunctions, or refusing to dissolve or modify injunctions. . . ."

The appropriate starting point for our analysis is to recognize the general rule that a bankruptcy court possesses only the jurisdiction and powers expressly or by necessary implication

conferred by Congress. Chicago Bank of Commerce v. Carter, 61 F.2d 986, 988 (8th Cir. 1932); First State Bank v. Sand Springs State Bank, 528 F.2d 350, 353 (10th Cir. 1976); In Re Parr, 13 B.R. 1010, 1021 (E.D. N.Y. 1981). Although a bankruptcy court is essentially a court of equity, Kenneally v. Standard Electronics Corp., 364 F.2d 642, 647 (8th Cir. 1966), its broad equitable powers may only be exercised in a manner which is consistent with the provisions of the Code. In Re J. M. Wells, Inc., 575 F.2d 329, 331 (1st Cir. 1978); In Re Texas Consumer Finance Corp., 480 F.2d 1261, 1265 (5th Cir. 1973); In Re Candor Diamond Corp., 26 B.R. 850, 851 (Bkrtcy. S.D. N.Y. 1983).

The issue as to whether the broad powers granted the bankruptcy court by §105(a) - to "issue any order . . .

necessary or appropriate to carry out the provisions of [the Code]" - empowers the court to suspend the running of a statutory period of redemption is a matter of first impression among the circuit courts. An examination of the reported decisions of those district courts and bankruptcy courts which have considered the matter reveals a wide divergence of opinion.

Section 2(a)(15) of the Bankruptcy Act, from which §105(a) is derived, allowed a bankruptcy court to issue such orders as might be necessary to prevent the defeat or impairment of its jurisdiction and to protect the integrity of the bankruptcy estate. 2 Collier on Bankruptcy ¶ 105.01 at 105-1 et. seq. (15th ed. 1983); see also, In Re Merritt Lumber Co., 336 F.Supp. 325 (E.D. Penn. 1971); In Re Northern Boneless Meat Co.,

9 B.R. 27 (S.D. N.Y. 1981). Although §105(a) is in certain respects broader in scope than its predecessor,[4] the general equitable powers granted to the bankruptcy court by the statute are not unlimited, particularly in instances where property rights created and defined by state law are involved.

Article I, section 8 of the United States Constitution provides that Congress shall have the power to establish uniform bankruptcy laws throughout the United States. Where Congress has chosen to exercise its authority, contrary provisions of state law must accordingly give way. It is

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4. See, H.R. Rep. No. 95-595, 95th Cong. 2nd Sess. 316, reprinted in (1978) U.S. Code Cong. & Ad. News. 5963, 6273.

equally well-settled, however, that state laws are suspended only to the extent of actual conflict with the bankruptcy system provided by Congress, so that in the absence of any conflict between the state and bankruptcy laws, the law of the state where the property is situated governs questions property rights. Stellwagen v. Clum, 245 U.S. 605 (1918); Sturges v. Crowninshield, 4 Wheat. 122 (1819); Ogden v. Saunders, 12 Wheat. 213 (1827); Matter of Gervich, 570 F.2d 247 (8th Cir. 1978); In Re Wetteroff, 453 F.2d 544 (8th Cir. 1971), cert. denied, 409 U.S. 934 (1972).

The importance of state law in determining property rights was emphasized in Butner v. United States, 440 U.S. 48 (1979), a case concerning whether the right to rents collected

during the period between the mortgagor's bankruptcy and the foreclosure sale of the mortgaged property was to be determined by state law or by a federal rule of equity. Writing for a unanimous Court, Justice Stevens declared that in those areas where Congress has not chosen to define by statute the property rights of parties to a bankruptcy proceeding, state law is determinative:

> "Property rights are created and defined by state law. Unless some federal interest requires a different result, there is no reason why such interests should be analyzed differently simply because an interested party is involved in a bankruptcy proceeding. Uniform treatment of property interests by both State and federal courts within a state serves to reduce uncertainty, to discourage forum shopping, and to prevent a party from receiving 'a windfall merely by reason of the happenstance of bankruptcy.'" [citation omitted] 440 U.S. at 55.

The Supreme Court did of course recognize in Butner that "[t]he equity

powers of the bankruptcy court play an important part in the administration of bankrupt estates in countless situations in which the judge is required to deal with particular, individualized problems." 440 U.S. at 55-6. From the fundamental principles embraced by the Butner opinion, however, as well as from the language of §105(a) itself, it follows that, absent a specific grant of authority from Congress or exceptional circumstances, a bankruptcy court may not exercise its equitable powers to create substantive rights which do not exist under state law. See In Re Perry, 25 B.R. 817 (Bkrtcy. D. Md. 1982); In Re Dunckle Associates, Inc., 19 B.R. 481, 485 (Bkrtcy. E.D. Penn. 1982); and cf. In Re Trigg, 630 F.2d 1370, 1375 (10th Cir. 1980). To conclude otherwise, and thus to hold that a bankruptcy court may, as a

matter of course, suspend the running of a statutory period of redemption pursuant to §105(a), would be to enlarge the debtor's property rights beyond those specifically set forth by the Minnesota legislature and by Congress in §108(b). Despite the broad equitable powers bestowed by §105(a), we therefore find ourselves in agreement with those courts which have held that §105(a) may not be invoked to toll or suspend the running of a statutory period of redemption absent fraud, mistake, accident, or erroneous conduct on the part of the foreclosing officer. In Re Martinson, 26 B.R. 648, 654 (D. N.D. (1983); Matter of Markee, 31 B.R. 429, 432 (Bkrtcy. D. Idaho 1983) In Re James, 20 B.R. 145, 150-1 (Bkrtcy. E.D.Mich 1982); In Re Headley, 13 B.R. 295, 297-98 (Bkrtcy. D. Colo. 1981); but cf., Bank of Commonwealth v. Bevan, 13

B.R. 989 (E.D. Mich. 1981); Bank of Ravenswood v. Patzold, 27 B.R. 542 (N.D. Ill. 1982).

Although the bankruptcy court here did not purport to create a uniform rule that the redemption period is tolled whenever a petition in bankruptcy is filed, we cannot agree with the district court that the bankruptcy court's order was a proper exercise of its equitable authority to deal with a "particular, individualized problem" under the standards outlined above. The bankruptcy court, after hearing certain evidence, found only "that an exigency exists, and that the debtors have substantial equity" in the property. One might well anticipate that in many instances the debtor will indeed enjoy substantial equity in the property in question. It is precisely this concern, however, which

the Minnesota legislature addressed by providing for a one-year period of redemption. As will be developed in detail below, whatever "exigency" may be said to have existed due to the timing of the expiration of that period was susceptible to alleviation by the specific provisions of §108(b).[5] There is no claim that First National or

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5. Section 108(b) provides as follows:

> (b) Except as provided in subsection (a) of this section, if applicable law, an order entered in a proceeding, or an agreement fixes a period within which the debtor or an individual protected under section 1301 of this title may file any pleading, demand, notice, or proof of claim or loss, cure a default, or perform any other similar act, and such period has not expired before the date of the filing of the petition, the trustee may only file, cure or perform, as the case may be, before the later of--
>
> (1) The end of such period,

any other party was guilty of any wrongdoing which adversely affected the debtors' ability to redeem the property within the statutory period. "[E]quity is available to protect property rights of the innocent debtor from the wrongful acts of other persons; however, equity does not extend to situations in which the debtor is simply unable to make the required payment within the prescribed time." In Re Headley, supra at 297. Nor have the debtors identified any federal interest which would, under the spirit of Butner, justify interference with clearly

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5 (continued)

> including any suspension of such period occurring on or after the commencement of the case; and
>
> (2) 60 days after the order for relief.

expressed state law and thwart First National's reasonable expectation that, upon expiration of the redemption period, it would obtain full title to the property. Given these circumstances, we hold that the bankruptcy court erred in ordering that the running of the statutory period of redemption be stayed pursuant to §105(a).

Although the district court rested its decision solely upon §105(a), the potential application of two other statutes--namely, 11 U.S.C. §362(a)[6]

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6. Section 362(a) provides in pertinent part as follows:

> (a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title operates as a stay, applicable to all entities, of--
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> (1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative or other

and §108(b)--has been briefed and argued on appeal by the parties. Since an appellate court is entitled to affirm a district court's judgment on grounds

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6 (continued)

> proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;
>
> (2) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title;
>
> (3) any act to obtain possession of property of the estate of of property from the estate;
>
> (4) any act to create, perfect, or enforce any lien against property of the estate;
>
> (5) any act to create, perfect, or enforce against property of

other than those relied upon by the district court, Brown v. St. Louis Police Dept., 691 F.2d 393, 396 (8th Cir. 1982); Chambers v. Omaha Public School Dist., 536 F.2d 222, 227 (8th Cir. 1976), a complete disposition of the present appeal therefore requires us to determine whether the decision below may be sustained by virtue of either of these two statutes.

Courts which have considered the present question under §362(a) and 108(b) have been virtually unanimous in concluding that, upon the filing of a

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6 (continued)

> the debtor any lien to the extent that such lien secured a claim that arose before the commencement of the case under this title;

petition in bankruptcy by a debtor, one of the two sections operates to stay the expiration of a statutory redemption period. The courts are in sharp disagreement, however, as to which section is the fount of such authority, and as to the extent of the relief granted. One line of cases, anchored by In Re Jenkins, 19 B.R. 105 (D. Colo. 1982), and In Re Johnson, 8 B.R. 371 (Bkrtcy. D. Minn. 1981),[7] stands for the proposition that the automatic stay provisions of §362(a) should be liberally construed to suspend the running of a

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7. See also, Eaton Land & Cattle Co. v. Rocky Mountain Investments, 28 B.R. 890 (Bkrtcy. D. Colo. 1983); In Re Shea Realty, Inc., 21 B.R. 790 (Bkrtcy. D. Vt. 1982); In Re H & W Enterprises, Inc., 19 B.R. 582 (Bkrtcy. N.D. Ia. 1982); In Re Sapphire Investments, 19 B.R. 492 (Bkrtcy. D. Az. 1982) Matter of Dohm, 14 B.R. 701 (Bkrtcy. N.D. Ill. 1981).

statutory period of redemption. Other decisions, holding to the contrary with respect to §362(a), have instead found that §108(b) is the sole applicable statute, and that its automatic extension of a redemption period provides the only relief available. See, e.g., In Re Martinson, supra; In Re Ecklund & Swedlund Development Corp., 17 LB.R. 451 (Bkrtcy. D. Minn. 1981); In Re Owens, 27 B.R. 946 (Bkrtcy. E.D. Mich. 1983). We conclude that the latter group of cases more accurately construe the language and legislative history of the two sections.

Preliminary to an examination of §362(a), it is important to identify the debtors' remaining interest in mortgaged property following a foreclosure sale, and to determine whether that interest constitutes property of the bankruptcy

estate.[8] It is long-settled under Minnesota law that foreclosue extinguishes the mortgage and that the purchaser at the foreclosure sale acquires a vested right to become the absolute owner of the property upon expiration of the redemption period, or, in lieu thereof, to receive the payment of the purchase price plus interest. In Re Klein, 9 F.Supp. 57, 59 (D. Minn. 1934); In Re Stacy, 9 F.Supp. 61,64 (D. Minn. 1934), and cases cited therein. The mortgagor, on the other hand, retains

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8. Section 541(a) defines property of the estate as "all legal or equitable interests of the debtor in property as of the commencement of the case." In characterizing the nature and extent of the debtor's interest in property, however, federal courts must look to state law. Georgia Pacific Corp. v. Sigma Service Corp., 22 B.R. 984 (Bkrtcy. M.D. La. 1982).

only the equity of redemption, plus the rights to possession, rents, and profits of the property during the period of redemption. Id. Accordingly, it is only the right of redemption, rather than the property itself, which passes into the bankruptcy estate if the redemption period has not expired at the time the bankruptcy petition is filed. 4 Collier on Bankruptcy ¶ 541.07[3] at 541-30 (15th ed. 1983).

Section 362(a) prohibits the "commencement or continuation . . . of a judicial, administrative, or other proceeding," the "enforcement" of a judgment obtained prior to bankruptcy, or any other "act" to obtain possession of property of the estate or to create, perfect, or enforce any lien against property of the estate. The fundamental

purposes of the automatic stay imposed by §362(a) against such actions are two-fold: to provide the debtor with a breathing spell from the collection efforts of creditors and to protect creditors by insuring that the assets of the estate will not be dissipated in a number of different proceedings. S. Rep. No. 989, 95th Cong., 2nd Sess. 54-5, reprinted in (1978) U.S. Code Cong. & Ad. News 5787, 5840-41; H. R. Rep. No. 95-595, 95th Cong. 2nd Sess. 340, reprinted in (1978) U.S. Code Cong. & Ad. News 5963, 6296-97. Although a stay under the circumstances involved here would be consistent with these broad policies, we are of the view that §362(a) cannot be read to stay the mere running of a statutory time period.

We respectfully disagree with those courts which have held that an automatic transfer of property, following the

expiration of a period of redemption, constitutes either an "act" or "proceeding," or the "enforcement" of a right, within the meaning of §362(a). See In Re Johnson, supra at 374; Matter of Dohm, 14 B.R. 701, 702 (Bkrtcy. N.D. Ill. 1981). That Congress intended §362(a) to prohibit only certain types of affirmative actions is evidenced by its use of the terms referenced above and by a corresponding failure to use terms which appropriately describe the suspension or extension of a statutory time period. In Re Ecklund & Swedlund Development Corp., supra at 455; see also, In Re Pridham, 31 B.R. 497 (Bkrtcy. E.D. Cal. 1983); In Re New Town Mall, 17 B.R. 326, 328 (Bkrtcy. D. S.D. 1982). It is also instructive to note that although Congress did not, in §362(a), specifically empower the bankruptcy court

to suspend the running of a statutory period of redemption, it had no difficulty expressing such authority when it amended §230 of the Bankruptcy Act in 1935 to provide for the tolling of statutory redemption periods in cases involving the reorganization of family farming operations. 49 Stat. 942 (1935).

Section 362(2) was designed to codify, in a single section, the scattered provisions of the Act and the former Bankruptcy Rules which governed the stay of various actions.[9] 2 Collier on Bankruptcy ¶ 362.01 at 362-5 (15th ed. 1983). The clear majority of cases decided under the prior provisions relating to automatic stays held that the

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9. See, §§116(4), 148, 314, 414, 428 and 614 of the Act and Bankruptcy Rules 401, 601, 10-601, 11-44, 12-43, and 13-401.

filing of a petition in bankruptcy did not toll or extend the running of a statutory period of redemption. See e.g., Town of Agawam v. Connors, 159 F.2d 360 (1st Cir. 1947), cert. denied, 330 U.S. 845 (1947); Garber v. Bankers' Mortgage Co., 27 F.2d 609 (D. Kan. 1928); In Re Klein, supra; In Re Nelson, 9 F.Supp. 657 (D. S.D. 1935); In Re Minnesota Urban Developers, Inc., 17 B.R. 443 (Bkrtcy. D. Minn. 1980); see also, In Re Trigg, supra; but cf., In Re Thomas J. Investment, Inc., 457 F.2d 168 (9th Cir. 1972). If we assume, as it is proper to do, that Congress acts with knowledge of existing law, Cannon v. University of Chicago, 441 U.S. 677, 697-97 (1979), it follows that, absent a clear manifestation of contrary intent, a newly-enacted or revised statute is presumed to be harmonious with existing law and its

judicial construction. Kansas City v. Federal Pacific Electric Co., 310 F.2d 271, 275 (8th Cir. 1962), cert. denied, 371 U.S. 912 (1962); United States v. Professional Air Traffic Controllers Organization (PATCO), 653 F.2d 1134, 1138 (7th Cir. 1981), cert. denied, 454 U.S. 1055 (1981). This presumption is especially valid where, as in the present case, the language of the statute under consideration is substantially identical to that of the previous statutes. In Re Ecklund & Swedlund Development Corp., supra at 455. A careful review of that portion of the legislative history of the Code relating to §362(a) reveals no evidence that Congress intended to change the result reached in such cases as In Re Klein, supra. We conclude, therefore, that §362(a) does not operate to toll or suspend the running of the one-year

statutory period of redemption created by Minn. Stat. §580.23(2).

The opposite result has been reached in jurisdictions which require that some affirmative action be taken by a creditor or by a third party in order to transfer full title to property upon the expiration of the period of redemption. See In Re Jenkins, supra; Eaton Land & Cattle Co. v. Rocky Mountain Investments, 28 B.R. 890 (Bkrtcy. D. Colo. 1983); In Re Sapphire Investments, 19 B.R. 492 (Bkrtcy. D. Az. 1982). Under the statutory scheme adopted by Minnesota, however, once the sheriff's certificate is issued to the successful bidder following the foreclosure sale, no further proceedings are required to vest absolute title to the property in the holder of the sheriff's certificate, assuming the debtor takes no steps to

redeem the property.[10] Minn. Stat. §580.12; In Re Klein, supra at 59; In Re Minnesota Urban Developers, Inc., supra at 446. First National, as purchaser at the foreclosure sale, thus had the right to expect either full title upon the expiration of the redemption period or, in lieu thereof, payment of the full purchase price plus accrued interest. Even accepting the debtors' agrument that §362(a) is designed in part to preserve the status quo as of the date of the petition in bankruptcy, their right remains only to redeem the property within the period established by statute. To hold that §362(a) operates an an

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10. It may also be noted that apparently Minnesota law contains no provision for extension of the statutory period of redemption.

automatic stay of the running of the statutory period of redemption would be to enlarge property rights created by state law, a result we view as unjustified by the language of §362(a) and as unintended by Congress.

Our conclusion regarding §362(a) is also based in part upon the presence in the Code of §108(b). That latter section, derived from §11(e) of the Act, provides that where the debtor "may file any pleading, demand, notice, or proof of claim or loss, cure a default, or perform any other similar act," and the period for so doing has not expired as of the filing of the petition in bankruptcy, the trustee is given until the end of such period, "including any suspension of such period occurring on or after the commencement of the case," or 60 days,

whichever is later, to perform that act.[11] The relationship between §362(a) and §108(b) was treated at length in Bank of Commonwealth v. Bevan, supra, the case which underlies the district court's opinion below and one of the few cases to consider all three statutes involved in this controversy (i.e., § §362(a), 108(b), and 105(a)). In Bevan, the mortgagor filed a petition for reorganization under Chapter 11 of the Code following foreclosure of the mortgaged property. The bankruptcy court

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11. Although the language of §108 refers only to the trustee, it is generally agreed that the debtor-in-possession is also entitled to the statute's privileges. In Re Interstate Restaurant Systems, Inc., 26 B.R. 298, 301 (Bkrtcy. S.D. Fla. 1982); In Re Santa Fe Development Etc., 16 B.R. 165, 167 n. 1 (9th Bkrtcy. App. Pan. 1981); but cf., Matter of Dohm, supra at 702.

subsequently entered an order pursuant to §362(a), indefinitely extending the statutory redemption period. In reviewing the bankruptcy court's order the district court noted that, unlike the language of §§362(a), which does not appear to affect the running of specific time periods, §108(b) explicitly grants the trustee additional time in which to perform an act such as that of redemption. Reading the two sections together, the court held that the automatic stay provisions of §362(a) do not override the extension of time provision contained in §108(b). "While a stay tolling the running of the statutory period would give the debtor greater protection than that contemplated by §108," the court reasoned, "where one section of the Bankruptcy Code explicitly governs an issue, another section should

not be interpreted to cause an irreconcilable conflict." Id., at 994. Thus, the court concluded:

> "An interpretation of §362(a) as an indefinite stay of the statutory period of redemption would render §108(b) superfluous. If §362(a) automatically stays the running of the statutory right to redeem until the stay is lifted pursuant to §362(c) or (d), the pertinent time allotments of §108(b) are completely extraneous as statutory time periods designed to control the trustee's activity. Moreover, if §362(a) is interpreted to provide for the automatic stay of time periods for an indefinite amount of time, then subsections (a) and (b) of §108, which define minimum and maximum time periods for the trustee to act, directly conflict with §362(a)." Id., at 994.[12]

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12. Despite its determination that the bankruptcy court incorrectly cited §362(a) as the basis for its order staying the running of the redemption period, however, Bevan affirmed the bankruptcy court's action, holding that the stay was a permissible exercise of the broad grant of discretionary authority embodied in §105. Id., at 996. Although,

A number of other courts have agreed, see In Re Martinson, supra; Matter of Markee, supra; In Re Owens, supra; In Re Construction Leasing & Investment Corp., 20 B.R. 546 (Bkrtcy. M.D. Fla. 1982); In Re Murphy, 22 B.R. 663 (Bkrtcy. D. Colo. 1982); In Re Ecklund & Swedlund Development Corp., supra; see also, In Re Hellenschmidt, 5 B.R. 758 (Bkrtcy. D. Colo. 1980), as does the leading authority in the field, see 4 Collier on Bankruptcy, ¶ 541.07[3] at 541-30 (15th ed. 1983).

Given our conclusion that the

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12 (continued)

for the reasons stated previously, we disagree with the Bevan court's view of §105(a), we are persuaded that its conclusions with respect to §362(a) and §108(b) are sound.

bankruptcy court lacked authority under either §105(a) or §362(a), to stay indefinitely the expiration of the statutory period of redemption, it becomes apparent that the only extension of time available to the debtors was that provided by the express terms of §108(b). Since their petition in bankruptcy was filed on October 8, 1981, some three weeks prior to the expiration of the one-year statutory period of redemption, the debtors had sixty days from the former date, or until December 8, 1981, within which to redeem the mortgaged property. That sixty-day period having passed without the debtors redeeming the property, full title vested automatically in First National in accordance with Minnesota law.

The decision of the district court is

reversed and the case is remanded to the district court for further proceedings consistent with this opinion.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS,
EIGHTH CIRCUIT.

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

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|---|---|---|
| FIRST NATIONAL BANK OF MONTEVIDEO, MINNESOTA, | ) | |
| Appellant, | ) | APPEAL FROM THE UNITED |
| v. | ) | STATES BANKRUPTCY |
| CURTIS H. JOHNSON, GLORIA JOHNSON, d/b/a OAK FARM LIVESTOCK AND OAK FARMS, INC., AND OAK FARMS SERVICES CO., | ) | COURT, DISTRICT OF MINNESOTA |
| Respondents. | ) | Civil No. 4-81-826 |

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RICHARD D. ANDERSON, Esq. and JEFFREY F. SHAW, Esq., Briggs and Morgan, appeared on behalf of appellant.

WILLIAM I. KAMPF, Esq., EMILY F. SEESEL, Esq., and ELIZABETH L. ZERBY, Esq., Kampf, Orey, Landsman & Seesel, appeared on behalf of respondents.

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First National Bank of Montevideo, Minnesota (the bank) appeals from an order of the United States Bankruptcy

Court[1] dated October 20, 1981, enjoining it from taking further action to foreclose on certain property mortgaged by respondents Curtis Johnson, Gloria Johnson, and entities through which they conducted business, and staying the Minnesota statutory period in which to redeem the property until further order of the bankruptcy court or until the bankruptcy cases concerning the property were closed. The court found the authority for its actions under 11 U.S.C. § 105(a).

Facts

The relevant facts pertaining to the respondents' default are not in

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[1]The Honorable John J. Connelly, United States Bankruptcy Judge for the District of Minnesota.

dispute.[2] In 1978 Oak Farms, Inc., executed a mortgage on certain property in Minnesota, securing a demand note in the principal amount of $300,000. In 1979 Oak Farms, Inc., Oak Farms Services Co., and the Johnsons executed a second mortgage securing payment of 19 promissory notes totaling $650,000 on the same property. The mortgage allowed the bank to sell the mortgaged property at public auction in the event of a default in payment.

Default occurred in September of 1980, and the mortgaged property was sold at a sheriff's auction in October of 1980. The bank itself purchased the

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[2]Respondents adopt appellant's statement of these facts.

property for $566,355.34.

Under Minnesota law, respondents had a twelve month period within which to redeem the mortgaged property. Minn. Stat. § 580.23. They did not redeem the property, but instead filed for a petition for reorganization under Chapter 11 of the Bankruptcy Code. On the same day they filed an adversary complaint, alleging, inter alia, that they had substantial equity in the mortgaged property and were entitled to an order staying the statutory redemption period.

The matter came on for a hearing before the bankruptcy court. At the hearing respondents presented the testimony of Curtis Johnson that he estimated the value of the mortgaged property to be $2,720,000 and stated that the total of the encumbrances on the

property was $2,043.000. He said that the basis of his opinion was his knowledge of what land was selling for in the area, an appraisal by Prudential Insurance, and other factors. Respondents' counsel sought to introduce various summary exhibits pertaining to respondent's equity in the mortgaged property, but they were not allowed into evidence because the underlying books and records were not furnished to appellant.

The bankruptcy court found that an exigency existed and that respondents had substantial equity in the property. Based upon those findings it enjoined appellant from foreclosing on the property and stayed the expiration of the redemption period pursuant to 11 U.S.C. § 105.

Issues presented on appeal

Appellant has designated these issues

on appeal:

1. Whether the bankruptcy court's order enjoining the running of the Minnesota statutory redemption period and related foreclosure proceedings under the auspices of 11 U.S.C. § 105 constitutes an impermissible exercise of the bankruptcy court's jurisdiction and authority.

2. Whether there is sufficient support in the record to support the court's finding that the debtors have substantial equity in the real property.

Discussion

1. Appealability of the Order

Because the order at issue is an interlocutory order of injunction, leave to appeal must be obtained from the district court; there is no appeal of

such an order as of right. Collier on Bankruptcy, ¶ 3.03[7][e]. Pursuant to Rule 8004 of the Interim Rules of Bankruptcy Procedure, the court construes the notice of appeal as an application for leave to appeal. Because the appeal raises questions concerning a controlling issue of law, and immediate appeal may serve to advance the ultimate termination of the litigation, the court grants leave to appeal. Cf. 28 U.S.C. § 1292(b); see generally, Collier on Bankruptcy, ¶ 3.03[7][d][v].

2. Jurisdiction under § 105(a)

The bankruptcy court relied on 11 U.S.C. § 105(a) for jurisdiction to enjoin the foreclosure and extend the redemption period. That section provides that "the bankruptcy court may issue any order, process or judgment that is

necessary or appropriate to carry out the provisions of this title." The bankruptcy court's power to enjoin the foreclosure and extend a statutory period of redemption has been recognized in Bank of Commwealth v. Bevan, D.C., 13 B.R. 989, 995, 996 (E.D. Mich. 1981), and in dicta in Ecklund v. Swedlund, Bky. No. 4-80-254, at 6 (D. Minn. Bky. July 28, 1981).

Appellant argues that the holding of Butner v. United States, 440 U.S. 48 (1979), forbids the use of the bankruptcy court's general equitable power to enter such an injunction. The Butner court held that the equity power of the bankruptcy court under the prior Bankruptcy Act should not have been used to create a uniform rule that a mortgagee had a secured interest in rents of

mortgaged property even though state law would recognize such an interest only after foreclosure. Id. at 55-56. Appellant notes that there is no provision under Minnesota law for extension of the time for statutory redemption. See Wivell v. Town and Country State Bank of Newport, Civil No. 3-80-414, at 2 (D. Minn. Aug. 12, 1980).

Here, unlike the situation in Butner, the bankruptcy court is not seeking to create a uniform rule which is contrary to state law. While recognizing that state law should normally be applied to define property interests in bankruptcy proceedings unless some federal interest suggests otherwise, the Butner court specifically recognized that "the equity power of the bankruptcy court plays an important part in the administration of

bankrupt estates in countless situations in which the judge is required to deal with particular, individualized problems." Butner v. United States, 440 U.S. at 55-56. Despite appellant's contention to the contrary, the bankruptcy court's order herein did not seek to create a uniform rule that the redemption period is tolled whenever bankruptcy is filed. The bankruptcy court examined the particular facts in the case, found that an exigency existed, that respondents had substantial equity in the subject property, and that it should preserve the status quo at the present stage of the reorganization proceedings. Such a decision is an individual case made on the basis of the particular facts is not foreclosed by Butner.

3. The bankruptcy court's factual findings

Appellant argues that because the bankruptcy court's finding that respondents had substantial equity in the subject property was based on insufficient evidence, the finding must be reversed and the case remanded for further evidentiary hearings. The clearly erroneous standard applies to the bankruptcy court's finding of fact. City National Bank of Fort Smith, Arkansas v. Bateman, No. 80-1334, at 12 (8th Cir. April 8, 1981); Matter of PRS Products, Inc., 574 F.2d 414 (8th Cir. 1978).

The finding of substantial equity in the property was based wholly on Johnson's testimony. The record supports a conclusion that his opinion as to the value of the land was based on his perceptions and was helpful to determination of a fact in issue. It was

thus admissible under Rule 701 of the Federal Rules of Evidence. It may have been preferable for his opinion to have been fully backed by specific documentation to allow appellant a chance to fully cross examine him, but it cannot be said on the basis of the record now before this court that the bankruptcy court's findings were clearly erroneous.

Because of the above rulings, the other issues presented by the parties need not be considered. The order of the bankruptcy court is affirmed.

Dated: March 7, 1982.

/s/ Diana L. Murphy
DIANA E. MURPHY
United States District Judge

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

In the Matter of:

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|---|---|
| CURTIS H. JOHNSON and | No. 3-81-1922 |
| GLORIA JEAN JOHNSON, | No. 3-81-1920 |
| d/b/a OAK FARM | No. 3-81-1921 |
| LIVESTOCK, and OAK | |
| FARMS, INC., and OAK | Adv. Proc. No. |
| FARMS SERVICES CO., | 81-0329 |

Debtors.

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Curtis H. Johnson and Gloria Jean Johnson, d/b/a Oak Farm Livestock and Oak Farms, Inc., and Oak Farms Services Co.,

ORDER

Plaintiffs,

vs.

First National Bank of Montevideo, United States of America by the Farmers Home Administration, Rosen Livestock, Inc., Howe Chemical Company, Inc., and N-Ren Corporation,

Defendants.

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The above-entitled matter came on for

hearing before the Honorable John Connelly, Judge of Bankruptcy Court, on Tuesday, October 13, 1981. The matter was subsequently continued until Friday, October 16, 1981 on the Motion and Complaint of the Plaintiffs seeking an Order to enjoin the expiration of the redemption period on certain real estate described in Plaintiffs' Complaint. Appearances for the Plaintiffs were made by William I. Kampf, Esq. and Emily F. Seesel, Esq. of Kampf, Orey, Landsman & Seesel, P.A. Jeffrey Shaw, Esq. of Briggs and Morgan appeared on behalf of the First National Bank of Montevideo and James Russell, Esq. appeared on behalf of Howe Chemical Company, Inc.; and William Gardner represented the N-Ren Corporation. Robert Kressel, Assistant United States Trustee was also present at the hearing.

Based on arguments of counsel, testimony of the debtor and being fully advised in the premises and it appearing that an exigency exists, and that the debtors have substantial equity in certain real property which is attached hereto as Exhibit "A",

IT IS HEREBY ORDERED as follows:

1. That Defendant First National Bank of Montevideo is enjoined from any further action to foreclose the property described above and that the expiration of Plaintiffs' time to redeem said property is hereby stayed pursuant to 11 U.S.C. §105.

2. That the running of the Minnesota Statutory redemption period and said mortgage foreclosure proceedings be and the same are hereby stayed until further Order of this Court or the above named

cases are closed.

Dated and entered this 20th day of October, 1981

/s/ John J. Connelly
JOHN J. CONNELLY
BANKRUPTCY JUDGE

## EXHIBIT A.

The tracts of land lying and being in the County of Yellow Medicine, State of Minnesota, described as follows, to-wit: The Southeast Quarter (SE1/4) of Section 2, Township 115, Range 42; The South One-half of the Southeast Quarter (S1/2SE1/4) and the North One-half of the Southwest Quarter (N1/2SW1/4) of Section 11, Township 115, Range 42; The West One-half of the Northeast Quarter (W1/2NE1/4) and the West One-half of the Southwest Quarter (W1/2SW1/4) of Section 12, Township 115, RAnge 42; the East One-half of the Northeast Quarter (E1/2NE1/4) of Section 7, Township 116, Range 41; the East One-half of the Southeast Quarter (E1/2SE1/4) of Section 6, Township 116, Range 41; The East One-half of the Southeast Quarter (E1/2SE1/4) of Section 7, Township 116, Range 41; The South One-half of the Southwest Quarter (S1/2SW1/4) of Section 29, Township 116N, Range 42W; and the North 40 acres of the West 120 acres of the Northwest Quarter (NW1/4) of Section 14, Township 115, Range 42. And all of the tracts or parcels of land lying and being in the County of Lac qui Parle, State of Minnesota, described as follows, to-wit:

The Northeast Quarter (NE1/4) of Section 34, Township 116N, Range 42W; the Northwest Quarter (NW1/4) of Section 32, Township 116N, Range 42W; and the South One-half of the South One-half of the

Southwest Quarter (S1/2S1/2SW1/4) of Section 11, Township 115, Range 42; and an undivided half interest in East Half Southeast Quarter (E1/2SE1/4) Section 36, Township 116N, Range 43W, Lac qui Parle County.

Including easements of record and all appurtenances.